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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,421	07/09/2003	Girish T. Dalal	201TR026A	1263
37535	7590	04/04/2006	EXAMINER	
NOVEON IP HOLDINGS CORP. 9911 BRECKSVILLE ROAD CLEVELAND, OH 44141-3247			BRUENJES, CHRISTOPHER P	
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 04/04/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,421

Applicant(s)

DALAL ET AL.

Examiner

Christopher P. Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I claims 1-15 in the reply filed on February 17, 2006 is acknowledged.

2. Claim 16 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 17, 2006.

WITHDRAWN REJECTIONS

3. The claim objections of claims 3, 7, 8, 12, and 13 of record in the Office Action mailed August 17, 2005, Pages 6-7 Paragraph 6, have been withdrawn due to applicant's amendments in the Paper filed February 17, 2006.

4. The 35 U.S.C. 112 rejections of claims 1-12 and 14-15 of record in the Office Action mailed August 17, 2005, Pages 7-11 Paragraph 7, have been withdrawn due to applicant's amendments and arguments in the Paper filed February 17, 2006.

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5. The 35 U.S.C. 102 rejections of claims 1, 3, 6, and 13 as anticipated by Arakawa of record in the Office Action mailed August 17, 2005, Pages 11-12 Paragraph 8, have been withdrawn due to applicant's amendments in the Paper filed February 17, 2006.

REPEATED REJECTIONS

6. The provisional obviousness-type double patenting rejections of claims 1-2 and 6-12 over claims 1-12 of copending Application Number 10/618,556 are repeated for the reasons set forth in the previous Office Action mailed August 17, 2005, Pages 4-6 Paragraph 5.

7. The 35 U.S.C. 103 rejections of claims 1 and 3-6 over Cinadr in view of Gebizlioglu are repeated for the reasons set forth in the previous Office Action mailed August 17, 2005, Pages 13-16 Paragraph 9.

8. The 35 U.S.C. 103 rejections of claims 2 and 7-13 over Cinadr in view of Gebizlioglu and Doi are repeated for the reasons set forth in the previous Office Action mailed August 17, 2005, Pages 17-20 Paragraph 10.

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9. The 35 U.S.C. 103 rejections of claims 14 and 15 over Cinadr in view of Gebizlioglu, Doi, and Bushi are repeated for the reasons set forth in the previous Office Action mailed August 17, 2005, Pages 20-21 Paragraph 11.

ANSWERS TO APPLICANT'S ARGUMENTS

10. Applicant's arguments regarding the claim objections and the 35 U.S.C. 112 rejections of record have been fully considered but they are moot since the rejections have been withdrawn.

11. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 1, 3, 6, and 13 as anticipated by Arakawa have been considered but they are moot since the rejections have been withdrawn.

12. Applicant's arguments regarding the double patenting rejections of claims 1-2 and 6-12 over claims 1-12 of Application number 10/618,556 have been considered but they are not persuasive.

In response to Applicant's argument that once one of the two application are allowed a terminal disclaimer will be filed, until a terminal disclaimer is filed or the claims amended

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around the rejection the double patenting rejection will be repeated.

13. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 1 and 3-6 over Cinadr in view of Gebizlioglu have been fully considered but they are not persuasive.

In response to Applicant's argument that Cinadr fails to teach a pipe made having a tubular core of blocky chlorinated polyethylene, the pending claims claim that the outer layer bonded to the tubular core comprises a chlorinated lower polyolefin such as blocky chlorinated polyolefin. Therefore, because the tubular core is only required by the claims to comprise blocky chlorinated polyolefin and not consist of block chlorinated polyolefin, the layer in Cinadr of PVC or CPVC comprising an additive of blocky chlorinated polyolefin reads on the claimed limitation.

In response to Applicant's argument that Gebizlioglu's pipe contains PVDC as the inner tubular core layer which is not claimed in Applicant's claims, it is agreed that PVDC is not claimed in Applicant's claims, however, the open language of Applicant's claims does not exclude a tubular core containing

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PVDC in addition to the blocky chlorinated polyolefin claimed from reading on the claimed invention.

In response to applicant's argument that the combination of the teachings would not suggest the claimed invention, Applicant admits that teachings might suggest to one skilled in the art that the blocky chlorinated polyethylene of Cinadr might be used as an additive in the tubular core of Gebizlioglu, which reads on the claimed invention as explained above.

14. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 2 and 7-13 over Cinadr in view of Gebizlioglu and Doi have been fully considered but they are not persuasive.

In response to Applicant's argument that Doi does not teach at what level of the mixture the copolymer is used in the thermoplastic resin and that Doi teaches a different crosslinked polyethylene from typical crosslinked polyethylene, the claimed invention also does not claim what the level of the mixture the copolymer is used in the thermoplastic resin so it is not germane to the rejection. Furthermore, the claims merely require that the outer layer be formed of cross-linked polyethylene, no other limitations with regard to the properties or structure of the cross-linked polyethylene are claimed.

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Therefore, regardless of whether the crosslinked polyethylene of Doi is different than typical crosslinked polyethylene, it is still crosslinked polyethylene and therefore reads on the broad limitation claimed in claim 2 of Applicant's claims.

In response to Applicant's argument that Doi teaches using PVC and not chlorinated polyethylene, Doi is not relied upon to teach the chlorinated polyethylene and is combinable with the other two references because each teaches forming a tubular core of PVC or PVDC. The PVC or PVDC of each of the references forming the tubular core with the blocky chlorinated polyethylene additive of Cinadr reads on the claimed invention because the tubular core is not limited in the claims to only a blocky chlorinated polyethylene.

In response to Applicant's argument that Doi is not analogous art, Doi is analogous insofar as the reference is concerned with forming pipes made of PVC or PVDC, which is the same art area in which Cinadr and Gebizlioglu are concerned.

15. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 14 and 15 over Cinadr in view of Gebizlioglu and Doi and Bushi have been fully considered but they are not persuasive.

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In response to Applicant's argument that Bushi teaches away from an outer layer of polyethylene, the references must be view as a whole for what they teach. In this case, Cinadr, Gebizlioglu and Doi teach the structure of the claimed invention with regard to claims 1-13 including the use of an adhesive, but fail to teach what specific adhesive is used to bond with the PVC or PVDC. Bushi is relied upon as a teaching of commonly used adhesives for bonding PVC or PVDC to other layers. Therefore, one of ordinary skill in the art reading the teachings of the references as a whole would be lead to remove the polyethylene layer of Gebizlioglu and Doi.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated

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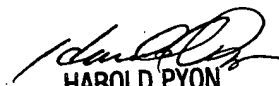
from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772
CPB
March 30, 2006


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/31/06